



STATE OF WEST VIRGINIA
DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY
DIVISION OF HOMELAND SECURITY
AND EMERGENCY MANAGEMENT
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MICHAEL L. TODOROVICH
DIRECTOR
DHSEM

August 20, 2019

Ms. Regeane Frederique
Director, Grants Division
FEMA Region III
Via FEMA-SingleAuditProgram@fema.dhs.gov

Re: Appeal of Management Decision-Revised
Single Audit Report 2018
\$901,411.00

Dear Ms. Frederique;

Please accept this letter as a written appeal of the Management Decision-Revised letter dated August 7, 2019 specifically Finding Number Reference 2018-038. This finding concerns \$273,157 for EMW-2014-EP-00044 and \$628,254 for EMW-2015-EP-00050 for a total of \$901,411 in disallowed costs. We respectfully request that you consider the following reasons to overturn this determination:

1) The standard that WV DHSEM did not obtain and/or maintain documentation of subrecipient EOP as required is not in either of the NOFOs and therefore should not be a basis to disallow these costs.

In neither of the NOFOs, EWM-2014-EP-00044 nor EMW-2015-EP-00050, does the requirement set forth to have an updated EOP for subrecipients on file. We are working with our subrecipients to ensure that EOPs are reviewed annually, but often there will not be a need to update plans frequently as very little changes in some of the more rural counties. For example, Webster County Office of Emergency Services reviewed their EOP in 2014 and completed a CPG 101 with their 2014 Application. During the period between 2010 and 2018 the population in the county declined 869 people to 8,285 residents and nothing else substantially changed in the county to warrant changing the EOP.

More importantly, the EMPG Performance Requirement Checklist does not require that the EOP be submitted by the subrecipient. Please see Exhibit A which is the checklist for Brooke County 2015. Nowhere does the checklist require an updated EOP be filed with DHSEM.

The finding that "[o]f the samples pulled by FEMA EMPG program manager during the July 2019 site visit, many of them did not have an updated EOP, but the sub[sic] still received EMPG funding" is misleading as the finding does not indicate if anyone reached out to the subrecipients to see if they had local EOPs and if the local

EOPs were "current" or needed updated. More importantly there is no objective standard as to what constitutes a "current EOP" set forth by DHSEM or in the NOFO or referenced in the Management Decision-Revised.

Since it is not a FEMA programmatic requirement to file an updated EOP with DHSEM, nor is it a DHSEM requirement for the subrecipients to file an updated EOP with DHSEM, these costs should not be disallowed.

2) Disallowing these costs will result in extreme financial hardship for the affected counties.

Currently the subrecipients involved are Wood County, Webster County, Tyler County, Tucker County, Raleigh County, Pendleton County, Ohio County, Mingo County, Lincoln County, Hancock County, Greenbrier County, Doddridge County, Cabell County, Brooke County and Barbour County. Some of these counties are among the poorest on the state with very small populations. Please see Exhibit C attached hereto with a breakdown of the amounts by county. For a county like Webster, with a budget of \$2.3 million dollars for FY 2020, every dollar must be fully utilized. Even small disallowed amounts cause undue hardship on these small, rural communities.

3) DHSEM had no opportunity to correct the practice.

While minimal compliance is still compliance, DHSEM strives to exceed the minimum requirements in everything that we do. Under past leadership, that wasn't always the case. However, DHSEM is now under new leadership which has made accountability, transparency and fiscal responsibility a priority. Assuming that updating EOPs of the subrecipients was a DHSEM requirement, it would have been done to put extra emphasis on our subrecipients to enhance our state of preparedness. The requirement is actually that any proposed updates to local EOPs be submitted to DHSEM as found in the 2014 EMPG Sub Applicant Application attached hereto as Exhibit E (only the relevant part of the 32-page document is provided). That we may have failed to meet our own goal, that exceeded the grant minimum requirements, should not be a basis for disallowing the cost. To paraphrase former FEMA Director Brock Long, DHSEM would never intentionally run a program incorrectly and if we made mistakes on the way a program is run, then we'll work to get it corrected. However, until this single audit in 2018 we had no idea FEMA had an issue with what we were doing. More importantly, we cannot in 2018 impact anything that program was doing in 2014 or 2015. Had we been warned in 2014 that FEMA had concerns we could have addressed them at that time.

Since DHSEM never had a meaningful opportunity to address FEMA's concerns during the relevant time period, these costs should not be disallowed.

4) Counties had EOPs in 2014

In April 2014 Webster County Submitted a CPG 101, V2.0 Plan Analysis Tool that addressed the county's EOP attached as Exhibit B. Importantly, the form notes that Webster County's EOP was written, reviewed and approved by March 2014. Yet, FEMA is disallowing \$9,274.54 in costs on the basis that "[DHSEM] did not obtain and/or maintain documentation of subrecipient Emergency Operations Plans ". This form was

submitted by the county with their EMPG application and was on file with DHSEM at the time of the single audit. We therefore had documentation that Webster County had an EOP that was current, and therefore this specific amount should not be disallowed. That the cost is being disallowed because the county did not file the actual EOP with DHSEM, places form over substance because they actually did have an EOP as demonstrated by Exhibit B.

Similarly, Cabell county submitted an Emergency Operations Plan Record of Changes with their 2016 application which demonstrates changes to their EOP in 2011, 2012 and 2016 attached hereto as Exhibit C. Clearly Cabell County was compliant, and their costs should not be disallowed.

Based on the reasons set forth above, we respectfully request that this appeal be granted, that the entirety of the \$901,411.00 be allowed and that FEMA work with DHSEM to clarify the minimum requirements of the grant compliance going forward. Should you have any additional questions or comments, please contact me directly.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Daniel K. Armstrong', with a long horizontal flourish extending to the right.

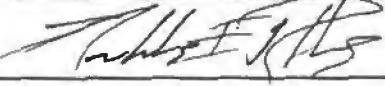
Daniel K. Armstrong
General Counsel
WVDHSEM

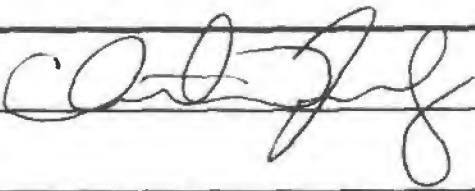
cc: Mr. David Mullins, Acting Finance Director, State of West Virginia
Mr. Michael Senycz, Director Recovery Division, DHS/FEMA Region III
Ms. April Cummings, Director, Mitigation Division, DHS/FEMA Region III

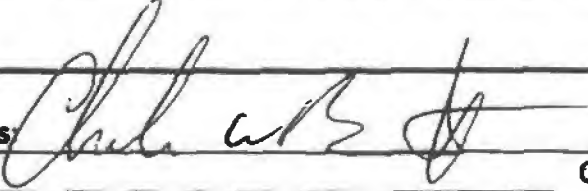
DIR-GC-DKA

EMPG Performance Requirements Checklist

Subgrantee: Brooke County **Year:** 2015

Planning:		Date: <u>11/2/2017</u>
	Nick Rhodes	
Notes:	<u>EOP date is Jan 21, 2009</u>	

Training:		Date: <u>8-25-2017</u>
	Christian Fernley	
Notes:		

Exercises:		Date: <u>8/28/17</u>																
	Chuck Bennett																	
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2">EMPG covered employees</th> </tr> <tr> <th style="width: 50%;">Name</th> <th style="width: 50%;">Position</th> </tr> </thead> <tbody> <tr> <td>K. Robert Fowler</td> <td>Director</td> </tr> <tr> <td>Andy Nickerson</td> <td>Deputy Director</td> </tr> <tr> <td>John Williams</td> <td>Deputy Director</td> </tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>			EMPG covered employees		Name	Position	K. Robert Fowler	Director	Andy Nickerson	Deputy Director	John Williams	Deputy Director						
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Name	Position																	
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Andy Nickerson	Deputy Director																	
John Williams	Deputy Director																	
Notes:																		

Signatures from each area of responsibility will signify that the jurisdiction has complied with all reporting requirements and that a reimbursement check for the EMPG award can be authorized.

Webster County Office of Emergency Services			Richard Rose, Director		Date Completed: 04/03/14	
Webster County Emergency Operations Plan			Rating			
Instructions: Please indicate the current rating for each criteria by placing the appropriate number from the scale below in the Rating column. If the plan is currently in the initial stages of development and you are unable to evaluate certain criteria, please indicate "N/A" in the Rating column.						
1: The Plan / Appendix / Annex minimally addresses the specified characteristics. 2: The Plan / Appendix / Annex addresses some of the specified characteristics. 3: The Plan / Appendix / Annex addresses most of the specified characteristics. 4: The Plan / Appendix / Annex addresses all of the specified characteristics. 5: The Plan / Appendix / Annex addresses all of the specified characteristics.						
Criteria are from CPG 101, Version 2.0. Information on these characteristics can be found on pages 4-17 and 4-18. Detailed information is also contained in Appendix C.						
Adequacy. A plan is adequate if the scope and concept of planned operations identify and address critical tasks effectively; the plan can accomplish the assigned mission while complying with guidance; and the plan's assumptions are valid, reasonable, and comply with guidance.			5			
Feasibility. A plan is feasible if the organization can accomplish the assigned mission and critical tasks by using available resources within the time contemplated by the plan. The organization allocates available resources to tasks and tracks the resources by status (e.g., assigned, out of service). Available resources include internal assets and those available through mutual aid or through existing state, regional, or Federal assistance agreements. Specifically, the jurisdiction should complete a capability estimate that:			4			
<ul style="list-style-type: none"> - Identifies the current status (e.g., training, quantity) of resources arrayed to support the plan - Analyzes the required resources based on the courses of action in the plan - Identifies the most supportable courses of action and ways to reduce the impact of resource deficiencies (ex. mutual aid) 						
Acceptability. A plan is acceptable if it meets the requirements driven by a threat or incident, meets decision maker and public cost and time limitations, and is consistent with the law. The plan can be justified in terms of the cost of resources and if its scale is proportional to mission requirements.			4			
Completeness. A plan is complete if it:						
<ul style="list-style-type: none"> - Incorporates all tasks to be accomplished. - Includes all required capabilities. - Integrates the needs of the general population, children of all ages, individuals with disabilities and others with access and functional needs, immigrants, individuals with limited English proficiency, and diverse racial and ethnic populations. - Provides a complete picture of the sequence and scope of the planned response operation (i.e., what should happen, when, and at whose direction). - Makes time estimates for achieving objectives. - Identifies success criteria and a desired end-state. 			5			
Compliance. The plan should align with guidance and doctrine to the maximum extent possible, because these provide a baseline that facilitates both planning and execution.						
<ul style="list-style-type: none"> - Compliance with CPG 101, Version 2.0 - Compliance with Other: - Compliance with Other: 			4			
Whole Community Engagement. Does the development of the plan include involvement of the whole community in planning efforts, including but not limited to: those non-governmental organizations beyond traditional engagement, groups representing those with functional and access needs, youth and children, and the private sector?			3			

FY	Doc ID	Vendor Name	Line Description	Backwd Ref	Doc ID	Sub Fund	Posting Amount
2018	AUTO1800804694	BARBOUR CO COMMISSION	EMPG 2015 - CR 1800120485 - 1st Allocation - Barbour	1800138716	EMPG	28,989.00	
2018	AUTO1800318096	BARBOUR CO COMMISSION	EMPG 2014 - CR 1800056915 - 2nd Allocation - Barbour	1800063018	EMPG	504.80	
2018	AUTO1800743448	BROOKE CO COMMISSION	EMPG 2014 - CR 1800110251 - Reallocation - Brooke	1800127637	EMPG	23,878.37	
2018	AUTO1800318098	BROOKE CO COMMISSION	EMPG 2015 - CR 1800056424 - 1st Allocation - Brooke	1800062998	EMPG	55,092.00	
2018	AUTO1800730536	CABELL CO COMMISSION	EMPG 2014 - CR 1800109262 - Reallocation - Cabell	1800125576	EMPG	18,537.93	
2018	AUTO1800073392	CABELL CO COMMISSION	EMPG 2015 - CR 1800011015 - 1st Allocation - Cabell	1800015514	EMPG	112,549.00	
2018	AUTO1800176876	DODDRIDGE CO COMMISSION	EMPG 2015 - CR 1800029758 - 1st Allocation - Doddridge	1800034264	EMPG	33,215.00	
2018	AUTO1800730538	GREENBRIER CO COMMISSION	EMPG 2014 - CR 1800109262 - Reallocation - Greenbrier	1800125578	EMPG	8,586.91	
2018	AUTO1800804697	HANCOCK CO COMMISSION	EMPG 2015 - CR 1800120485 - 1st Allocation - Hancock	1800138717	EMPG	77,963.79	
2018	AUTO1800804698	LINCOLN CO COMMISSION	EMPG 2015 - CR 1800120485 - 1st Allocation - Lincoln	1800138718	EMPG	50,147.40	
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2018	AUTO1800804701	PENDLETON CO COMMISSION	EMPG 2014 - CR 1800120454 - Reallocation - Pendleton	1800138720	EMPG	3,484.53	
2018	AUTO1800075681	PENDLETON CO COMMISSION	EMPG 2015 - CR 1800011015 - 1st Allocation - Pendleton	1800015736	EMPG	22,145.00	
2018	AUTO1800721743	RALEIGH CO EMERGENCY SERVICES A	EMPG 2014 - CR 1800108910 - Reallocation - Raleigh	1800124954	EMPG	153,903.86	
2018	AUTO1800569482	RALEIGH CO EMERGENCY SERVICES A	EMPG 2015 - CR 1800093068 - 1st Allocation - Raleigh	1800106990	EMPG	145,178.17	
2018	AUTO1800241334	TUCKER CO COMMISSION	EMPG 2015 - CR 1800042988 - 1st Allocation - Tucker	1800048198	EMPG	35,264.91	
2018	AUTO1800163113	TUCKER CO COMMISSION	EMPG 2014 - CR 1800024319 - 2nd Allocation - Tucker	1800030737	EMPG	4,403.44	
2018	AUTO1800743464	TYLER CO COMMISSION	EMPG 2014 - CR 1800110251 - Reallocation - Tyler	1800127597	EMPG	1,257.12	
2018	AUTO1800730546	WEBSTER CO COMMISSION	EMPG 2014 - CR 1800109262 - Reallocation - Webster	1800125585	EMPG	9,274.54	
2018	AUTO1800256021	WOOD CO COMMISSION	EMPG 2015 - CR 1800042988 - 1st Allocation - Wood	1800048196	EMPG	67,711.26	
2018	AUTO1800804704	WOOD CO COMMISSION	EMPG 2014 - CR 1800120454 - Reallocation - Wood	1800138725	EMPG	18,379.79	

CABELL COUNTY EMERGENCY OPERATIONS PLAN

RECORD OF CHANGES

This document serves as a record of the changes and revisions made to the *Cabell County Emergency Operations Plan*. All significant revisions should be logged in this section (with the exception of the correction of typographical and other such errors).

Date	Description of Change	Initials
2011	<ul style="list-style-type: none"> Complete re-write Incorporate of functional discipline planning committee comments 	CCOES, JHC
9/2012	<ul style="list-style-type: none"> Conversion to Emergency Support Function organization More detailed integration of planning committee comments Creation of Flood/Dam Failure and Terrorism hazard-specific annexes Better integration of CPG-101 requirements 	CCOES, JHC
1/2016	<ul style="list-style-type: none"> Basic Plan (update hazards list, update schools listing, update references) ESF #2 (create UTAC/VTAC graphic, remove appendices) ESF #3 (absorb debris mgmt. into concept of operations, update names of public works providers, remove appendices, add new appendix for right of entry agreement) ESF #4 (add CCEMS support on swiftwater/water rescue incidents) ESF #5 (replaced CERT with MRC, added reference to EOC activation SOG) ESF #6 (update shelter list, update resource providers with whom county has MOUs, remove CERT) ESF #8 (add CCEMS support on swiftwater/water rescue incidents, add WVDA, change WesCom to MedCom) ESF #9 (add CCEMS DIRT, add HFD confined space) ESF #10 (add WVDEP) ESF #12 (update generator listing) ESF #13 (add Barboursville PD, Marshall PD, CSX agents) ESF #14 (remove damage assessment forms, add WV VOAD, update damage assessment process) ESF #15 (strengthen social media discussion, add Heads Up Huntington) Population Protection Support Annex (add OHMD, Pristara under special needs, add transportation resources, add WPLJ considerations) Prevention & Protection Support Annex (add Cabell/Wayne Homeland Security Group) Volunteer & Donations Management Support Annex (add ARES, remove CERT) Warning Support Annex (add IPAWS, Heads Up Huntington resources, add NWS and Huntington PD as support agencies) 	CCOES, JHC

Exhibit D

<p align="center">WEST VIRGINIA Division of Homeland Security and Emergency Management (DHSEM)</p> <p align="center">2014 EMPG PROGRAM</p>	<p align="center">ITEMIZATION OF FUNDS BY CATEGORY</p> <p align="center">PAGE 3-1 (PLANNING ONLY)</p>		
Budget Category	Matching Funds	Federal EMPG Funds	Approved (DHSEM Use Only)
<p>Planning:</p> <p>Briefly describe how your jurisdiction will meet the following mandatory planning requirements.</p> <ul style="list-style-type: none"> a. Review and update the most recent All-Hazards Mitigation Plan developed for the Pre-Disaster Mitigation (PDM) Program and Hazard Mitigation Grant Program (HMGP) to include identifying a wider range of threats, based on the Threat and Hazard Identification and Risk Assessment (THIRA), as guidance for this assessment become available during the year. b. Review and make recommendations for updates to local emergency operations plans based on the <i>Evaluation Matrix for Compliance with CPG 101 v.2</i>, released in May 2011. See link below: www.fema.gov/xls/about/divisions/ncd/CPG_101_v2_cast.xls. c. Prepare and submit revisions to the local emergency operations plan, based on the top two priorities identified in b. above. Submissions to be made with final financial documentation. 			
PLEASE CARRY TOTALS TO THE BOTTOM OF PAGE 3-6	↓	↓	↓

* All funds must be rounded to the nearest whole dollar amount. Please make additional copies of this page as necessary.*